

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAREEF ABDOU,

Plaintiff,

-v-

BRIAN MAHANY, et al.,

Defendants.

19 Civ. 1824 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has received letters from plaintiff Shareef Abdou, Dkt. 113, and defendant Anthony Dietz, Dkt. 112, regarding a recent discovery dispute. The Court resolves the discovery dispute as follows:

1. Three of Dietz's document requests, Nos. 38, 42, and 46, are at issue. *See* Dkt. 113-2 ("Dietz Requests"). These Requests seek documents related to Abdou's alleged cognitive impairment as referenced in his complaint in the 2012 case of *Abdou v. Merck & Co, Inc., et al.*, 12-cv-0550 (E.D.N.Y). *See* Dkt. 112-1 ("Merck Complaint"). Any cognitive impairment Abdou may or may not have suffered at the time he filed the Merck Complaint, however, is not relevant to the claims in this matter, and therefore Dietz is not entitled in discovery to documents related to Abdou's alleged impairment. In any event, as a practical matter, Abdou has indicated that he has never suffered from a cognitive impairment and therefore has no documents related to such an impairment. *See* Dkt. 113 at 2. Accordingly, the Court sustains Abdou's objections to the three Dietz Requests addressing cognitive impairment.

2. Dietz has also requested the de-designation of all documents produced by Abdou that are designated "Attorneys Eyes Only" ("AEO"). *See* Dkt. 112. These documents include

communications between Dietz and Abdou, as well as documents known to be in Dietz's possession. *Id.* at 3. The Court understands that Abdou is subject to certain confidentiality agreements that require the use of the AEO designation. *See* Dkt. 113 at 2. However, such agreements may be subject to being overridden by court orders. Accordingly, the Court orders that to the extent that any documents presently designated AEO are ones that consist of communications with Dietz or are understood to have been shared with Dietz at any earlier time, Abdou is ordered to change the designation from AEO to Confidential, which will enable Dietz to obtain access to these documents. The Court otherwise does not disturb the AEO designation on documents produced by Abdou.

The Clerk of the Court is respectfully requested to terminate the letter motion pending at docket 112.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: August 13, 2020
New York, New York